

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

BRANDON GRIFFITH,

Petitioner,

vs.

STATE OF MONTANA AND ATTORNEY
GENERAL OF THE STATE OF
MONTANA,

Respondents.

CV-23-143-M-DWM

ORDER

Plaintiff Brandon Griffith, proceeding without counsel, filed a Petition for a Writ of Habeas Corpus. (Doc. 1)

Before the State is required to respond, the Court must determine whether “it plainly appears from the petition and any attached exhibits that the prisoner is not entitled to relief.” Rule 4(b), Rules Governing § 2254 Cases in the United States District Courts. A petitioner “who is able to state facts showing a real possibility of constitutional error should survive Rule 4 review.” *Calderon v. United States Dist. Court*, 98 F.3d 1102, 1109 (9th Cir. 1996) (“*Nicolas*”) (Schroeder, C.J., concurring) (referring to Rules Governing § 2254 Cases). But the Court should “eliminate the burden that would be placed on the respondent by ordering an unnecessary answer.” Advisory Committee Note (1976), Rule 4, § 2254 Rules.

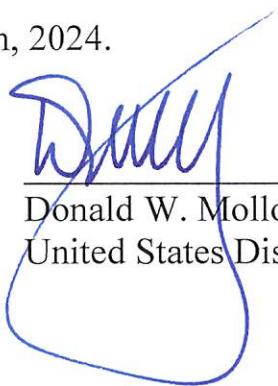
The Court screened Griffith's petition and determined that the issues he raises were procedurally default. (Doc. 7.) Griffith was advised that if he did not show cause for his default, his petition would be dismissed with prejudice. Griffith has not responded. For the reasons outlined in the Court's prior Order, Griffith's petition will be dismissed.

Reasonable jurists would find no basis to disagree with the dismissal on procedural grounds. *See Gonzalez v. Thaler*, 565 U.S. 134, 140–41 (2012) (quoting *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)). A certificate of appealability is not warranted.

Accordingly, IT IS ORDERED:

1. This action is DISMISSED as procedurally defaulted.
2. The clerk shall enter, by separate document, a judgment of dismissal.
3. A certificate of appealability is DENIED. The clerk shall immediately process the appeal if Griffiths files a notice of appeal.

DATED this 27th day of March, 2024.



Donald W. Molloy, District Judge
United States District Court